



City of Austin

Purchasing Office

P.O. Box 1088, Austin, TX 78767

April 23, 2019

K&M Steam Cleaning
Ken Moncebaiz
President
8910 Research Blvd. B-2
Austin, TX 78758
kandmsteamcleaning@sbcglobal.net

Dear Mr. Moncebaiz:

The City has approved the execution of a contract with your company for upholstery cleaning in accordance with the referenced solicitation. This is an as needed contract with no guarantee of work. The annual authorization amount for the Austin Public Library is \$40,529 per the submitted price sheet as well as an additional \$6,000 for use by the Austin Convention Center if needed.

Responsible Department:	Austin Public Library
Department Contact Person:	Jorge Valle
Department Contact Email:	Jorge.valle@austintexas.gov
Department Contact Telephone:	512-974-7432
Project Name:	Furniture Upholstery Cleaning
Contractor Name:	K & M Steam Cleaning
Contract Number:	MA 8500 NA190000129
Contract Period:	April 23, 2019 through April 22, 2022
Dollar Amount	Not to Exceed \$46,529 annually and for each extension option
Extension Options:	Two 12-month Extension Options
Solicitation Type & Number:	IFB 5800 SMW1001REBID

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Shawn Willett
Deputy Procurement Officer
City of Austin
Purchasing Office

cc: Monica McClure
Jorge Valle

9. That it does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation with any solicitation responses on separate pages to be annexed hereto.

OFFER

Company Name: K&M Steam Cleaning
Company Address: 8910 Research Blvd., B-2
City, State, Zip: Austin, Tx 78758
Vendor
Registration No. V00000956726
Printed Name of Officer or
Authorized Representative: Ken Monchaiz
Title: President
Signature of Officer or
Authorized Representative: [Signature]
Date: 3.12.19
Email
Address: handmsteamcleaning@sbglobal.net
Phone
Number: 512.836.8900

ACCEPTANCE

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as Contract No. MA-8500-NA190000129

CITY OF AUSTIN

Awarded this 23rd day of April, 2019

[Signature]
Signature

Shawn Willett, Deputy Procurement Officer
Printed Name and Title of Authorized Person

4-23-19
Date



INVITATION FOR BIDS
IFB 5800 SMW1001REBID

Description : Upholstery Cleaning Services for Austin Public Library

Issue Date: March 11, 2019

Bid Due Date and Time: March 26, 2019 prior to 2:00 pm CT

Deadline for Questions (See section 2.3.1 of the Instructions) : March 18, 2019 prior to 5:00 pm CT

Forms requiring completion can be found starting on page 41

LIVE SOLICITATION OPENING ONLINE (3:00 PM CT on the date the Offers are due):

For information on how to attend the Solicitation opening online, please select this link:

<http://www.austintexas.gov/department/bid-opening-webinars>

Authorized contact:

Shawn Willett, Deputy Procurement Officer

Phone: (512) 974-2021

E-Mail: shawn.willett@austintexas.gov

DeJuan Brown, Procurement Specialist II

Phone: (512) 974-2670

E-Mail: dejuan.brown@austintexas.gov

There are no M/WBE subcontracting goals established for this solicitation. The authorized contact for questions specific to the City's Minority and Women-Owned Business Enterprise Program or the Subcontracting Utilization Form is:

Sonya Powell, Business Development Counselor II

Phone: (512) 974-7600

E-Mail: sonya.powell@austintexas.gov

Commodity Codes: 9368833, Cleaning and Protection Services, Upholstery

Estimated Solicitation Schedule Summary (subject to change)

Milestone	Date or Timeframe
1. Solicitation Issue Date	March 11, 2019
2. Pre-Bid Meeting	N/A
3. Deadline for Questions and Answers	March 18, 2019
4. Offers Due	March 26, 2019
5. City Council consideration	May 23, 2019

Contents

	Page
A. Introduction and Purpose	3
B. Definitions and Instructions	4-13
C. Specification/Scope of Work	14-20
D. Contract Document.....	22-39
Required Submittals	
E. Offer and Acceptance Form.....	41-42
F. Price Sheet.....	43
G. Local Business Presence Identification	44-45
H. Non- Discrimination and Retaliation Certification.....	46-47
I. Non- Resident Bidder Provisions	48
J. Minority and Women Owned Business Enterprise Procurement Program Subcontracting/Subconsulting Utilization Form.....	49
K. Minority and Women Owned Business Enterprise Procurement Program Subcontracting/Subconsulting Utilization Plan.....	50-52

A. INTRODUCTION AND PURPOSE

Introduction

About the City of Austin

The City of Austin, Texas, population 840,000, is the 13th largest city in the country. This vibrant and dynamic city tops numerous "Best" lists for business, entertainment, cost of living and quality of life. Austin was selected as the "Best City for the Next Decade" (Kiplinger), the "Top Creative Center" in the US (Entrepreneur.com) and is in the Top Seven List of Intelligent Communities for 2012 as ranked by the Intelligent Community Forum. Austin continues to lead the country with its vision of being the "Most Livable City in the Country", emerging as a player on the international scene with such events as SXSW, Formula 1 and being home to companies such as Apple, Samsung, Dell, The Seton Healthcare Family and St. David's HealthCare systems. From the home of state government and the City of Texas, to the "Live Music Capital of the World" and its growth as a film center, Austin has gained worldwide attention as a hub for education, business, health, and sustainability. Since 1900, Austin's population has doubled every 20 years, with continued projected record-breaking growth into the next decade and beyond.

Purpose

The purpose of this contract is to establish a contract with a single contractor able to provide upholstery cleaning services with associated related maintenance for the City of Austin Library ("City") public use furniture.

B. DEFINITIONS AND INSTRUCTIONS

1.0 DEFINITIONS

Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

- 1.1 Addendum - a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.
- 1.2. Alternate Offers - multiple Offers with substantive variations from the same Offeror in response to a Solicitation.
- 1.3. Appropriate, Appropriated, or Appropriation - the adoption by the City Council of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
- 1.4. Authorized City Representative - a person designated by the City Manager to act for the Contract Awarding Authority.
- 1.5 Bid - a complete, properly signed response to an Invitation for Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
- 1.6 Bidder - a person, firm, or entity that submits a Bid in response to an Invitation for Bid. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
- 1.7 Bid Guaranty – a form of security assuring that the bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
- 1.8 Business Entity – any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.
- 1.9 City - the City of Austin, a Texas home-rule municipal corporation.
- 1.10 Compliance Plan - is defined in chapter 2-9 of the City Code.
- 1.11 Contract - a binding legal agreement between the City and the Offeror. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract Document, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
 - A. any exceptions to the Offer accepted in writing by the City
 - B. Contract document
 - C. the Offer, exhibits, and attachments; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.
- 1.12 Contract Awarding Authority - a City department authorized to enter into Contracts on behalf of the City.
- 1.13 Contractor/Consultant - a person, firm or entity that supplies or provides goods and/or services to the City by Contract.

- 1.14 Controlling Interest means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stocks or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.
- 1.15 Deliverables - the goods, products, materials, and/or services to be provided to the City under a Purchase Order, Contract, or Master Agreement.
- 1.16 Disadvantaged Business Enterprise - is defined in 49 Code of Federal Regulation Part 26 or other applicable federal regulations.
- 1.17 Due Date - the date and time specified for receipt of Bids and Compliance Plans.
- 1.18 Goods - supplies, materials, or equipment.
- 1.19 Interested Party – a person who has a Controlling Interest in a Business Entity with whom the City contracts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, adviser, or attorney for the Business Entity.
- 1.20 Invitation for Bid (IFB) - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or on the Internet.
- 1.21 Late Offer - a Bid that is received after the Due Date and time specified in the Solicitation.
- 1.22 Lowest Responsible Offer - the Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Vendor to perform the Contract, past performance of the Vendor, and compliance with all City ordinances concerning the purchasing process.
- 1.23 Lowest Responsible Offeror - the Offeror submitting the Lowest Responsible Offer.
- 1.24 Minority-Owned Business - is defined in chapter 2-9 of the City Code.
- 1.25 Non-Professional Services - services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
- 1.26 Offer - a complete signed response to a Solicitation including, but not limited to, an Invitation for Bid
- 1.27 Offeror - a person, firm, or entity that submits an Offer in response to a City Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
- 1.28 Pre-Bid Conference - a conference conducted by the Contract Awarding Authority, held in order to allow Offerors and Vendors to ask questions about the proposed Contract and particularly the Contract specifications. If a Pre-Bid Conference is mandatory and is not attended by an Offeror, their Offer will be rejected.
- 1.29 Price Sheet - a document, signed and dated by a Bidder, containing unit and extended bid prices for all goods and/or services, identified by item numbers and descriptions, for which Bids are being submitted
- 1.30 Purchasing Office - refers to the Purchasing Office in the Financial Services Department of the City.

- 1.31 Resident Bidder - a person, firm, or entity whose principal place of business is in the State of Texas, including a Contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.
- 1.32 Responsible - refers to the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.
- 1.33 Responsive - meeting all the requirements of a Solicitation.
- 1.34 Services - include all work or labor performed for the City on an independent Contractor basis other than construction.
- 1.35 Small and Minority Business Resources - Department responsible for administering the Minority-Owned, Women-Owned, and Disadvantaged Business Enterprise Procurement Programs for the City.
- 1.36 Solicitation - as applicable, includes Invitation for Bid, or such other request as defined by the City.
- 1.37 Subcontractor/Subconsultant - a person, firm, or entity providing goods and/or services to a prime Contractor / Consultant to be used in the performance of the prime Contractor/Consultant's obligations under a Contract.
- 1.38 Sub-Subcontractor/Sub-Subconsultant- a person, firm or entity providing goods and/or services to a Subcontractor/Subconsultant to be used in the performance of the Subcontractor/Subconsultant's obligations under a Contract.
- 1.39 Unbalanced Offer - an Offer that is based on prices which are significantly less than cost for some items and significantly more than cost for others.
- 1.40 Women-Owned Business - is defined in chapter 2-9 of the City Code.

2.0 INSTRUCTIONS

2.1 GENERAL

- 2.1.1 Solicitation – IFB. The documents that make up this Solicitation constitute an Invitation for Bids ("IFB" or "Solicitation"). This IFB is comprised of three (3) general components including:
- a. Instructions (this component, section B) describing the City's competitive process;
 - b. Contract, including the City's Specification/Scope of Work requirements (section C) and Contract Document (section D); and
 - c. Required Submittals, composed of the forms including the Offer and Acceptance Form (Sections E-K)
- 2.1.2 Process – CSB. This IFB describes the City's Competitive Sealed Bidding process. The Competitive Sealed Bidding process allows for the award of a contract to the Bidder Offering the lowest Responsive Bid and Responsible price
- 2.1.3 Vendor Registration. All Vendors, Contractors, Subcontractors, Consultants, and Subconsultants desiring to sell to the City should register to do business with the City prior to submitting an Offer to a City Solicitation. Prime Contractors/Consultants are responsible for ensuring that their Subcontractors/Subconsultants are registered. Registration can be done through the City's online vendor registration system. Log onto http://www.austintexas.gov/financeonline/vendor_connection/index.cfm and follow the directions.

- 2.1.4 Authorized Contact Person. The Authorized Contact Person (or persons) for this Solicitation are listed on the Solicitation's cover page. The Authorized Contact Person(s) is the only City staff designated by the Purchasing Officer to act on behalf of the City with regards to this Solicitation. Offerors may direct specific questions concerning Subcontractors and responding to the Subcontracting Utilization Form to the Small and Minority Business Resource contact, also listed on the Solicitation's cover page.
- 2.1.5 Anti-Lobbying. This Solicitation is subject to City Code, Ch. 2-7 Article 6, Anti-Lobbying and Procurement (https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf). In accordance with this ordinance, following the publication of the Solicitation and through the earlier of the date the last contract resulting from the solicitation is signed, 60 days following council authorization of the last contract resulting from the solicitation, or cancellation of the solicitation by the City, Offerors or their Agents shall not make any restricted communications to City officials or employees other than any named Authorized Contact Person(s).
- 2.1.6 Protests. The Purchasing Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying the City of Austin of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Officer may dismiss your complaint or protest.
- a. Protest regarding the solicitation (Pre-Bid Protest). Any protest regarding the solicitation issued by the City must be filed no later than five (5) days before the opening of bids. Any protest filed after that date which raises issues regarding the solicitation will not be considered.
 - b. Protests regarding the evaluation of bids. Any protest regarding the evaluation of bids by the City must be filed with the City no later than five (5) days after the notification that the protestor's status as a bidder has changed, such as notification that a bid has been rejected. Any protest filed after such date which raises issues regarding the evaluation will not be considered.
 - c. Protests regarding the award recommendation. Any protest regarding the award recommendation made by the City must be filed with the City no later than five (5) days after the award recommendation is posted online at Austin Finance Online with the solicitation information. Any protest filed after such date which raises issues regarding the award recommendation will not be considered.
 - d. You must submit your protest in writing and it must include the following information:
 - i. your name, address, telephone, and email address;
 - ii. the solicitation number;
 - iii. the specific facts and law upon which the protest of the solicitation or the award is based, and shall include all pertinent documents and evidence; and
 - iv. relief requested
 - e. Your protest must be concise and presented logically and factually to help with the City's review.
 - f. When the City receives a timely written protest, the Purchasing Officer will determine whether the grounds for your protest are sufficient. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing, usually within ten (10) working days. If the Purchasing Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.
 - g. The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are: representatives from the department that requested the purchase, the Law Department, the Purchasing Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.

- h. A decision will usually be made within fifteen (15) calendar days after the hearing.
- i. The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
- j. When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that the City urgently requires the supplies or services to be purchased, or failure to make an award promptly will unduly delay delivery or performance. In those instances, the City will notify you and make every effort to resolve your protest before the award.

2.1.7 Vendor Help Desk. For general questions concerning the City's online financial services system, Austin Finance Online, Vendor Connection ("Vendor Connection"), Offerors may contact the Vendor Help Desk at (512) 974-2018. Assistance from the Vendor Help Desk is limited to navigating and using Vendor Connection only. The Vendor Help Desk will not respond to any questions concerning a specific solicitation.

2.1.8 Subcontractors. In accordance with Austin City Code, Ch. 2-9A/B/C/D as applicable, this Solicitation was reviewed for sufficient (i) subcontracting opportunities and (ii) the availability of City certified Minority-Owned Business Enterprises or Women-Owned Business Enterprises (M/WBE), to determine if Subcontract Goals could be assigned. The Solicitation's cover page will indicate if M/WBE Subcontract Goals were assigned.

- A. Subcontract Goals Assigned. If Subcontract Goals were assigned, a Compliance Plan indicating the percentage of required M/WBE Subcontract participation is attached. Offerors shall review the Compliance Plan document and comply with all its further instructions.
- B. No Subcontract Goals Assigned. If no Subcontract Goals were assigned, then no Compliance Plan is attached, and no further instructions apply. However, Offerors must complete the Subcontractor/Subconsultant Utilization Plan in section J of this document and follow the appropriate instructions therein.

2.1.9 Review of Documents. Offerors shall examine all documents that make up the Solicitation and promptly notify the Authorized Contact Person(s) of any perceived omission, ambiguity, inconsistency or error that the Offeror may discover. Offerors shall also notify the Authorized Contact Person(s) of any instructions or requirements in the Solicitation the Offeror perceives to be unduly restrictive or that may unreasonably limit the Offeror's ability to compete for any contract that may result from this Solicitation. The City assumes no responsibility for any errors, misrepresentations or misinterpretations that result from the use of incomplete Solicitations.

2.2 PUBLICATION, AVAILABILITY AND NOTICES

2.2.1 Publication and Availability. This Solicitation was published and is available for viewing and download from Austin Finance Online. This Solicitation is also available in hardcopy from the Purchasing Office. Requests for hardcopies of this Solicitation shall be directed to the Authorized Contact Person(s) listed on the cover page.

2.2.2 Initial Notice. An initial notice of the Solicitation's availability was issued automatically to all companies or persons registered in Vendor Connection that indicated their interest in being notified of solicitations for the products and/or services sought in this Solicitation through their selection of NIGP commodity codes in their registration profile. This initial notice was only sent to those vendors that had selected the NIGP commodity codes identified on the Solicitation's cover page prior to the Solicitation's publication date.

2.2.3 Newspaper Notices. If applicable, notice(s) concerning this Solicitation were published in a local newspaper, procedurally compliant with Texas Local Government Code, Ch. 252.

2.2.4 Supplemental Notices. As necessary, the City reserves the right to issue supplemental notices concerning the availability of this Solicitation through various public organizations, professional or trade associations, private and/or subscription-based entities.

- 2.2.5 Subsequent Notices. To receive any subsequent notices concerning this Solicitation, all registered vendors, any company or person receiving an Initial or Supplemental notice, or any other company or persons wishing to receive subsequent notices concerning this Solicitation must register in Austin Finance Online and subscribe to this Solicitation.

2.3 PRE-OFFER EXCHANGES AND ADDENDA

- 2.3.1 Questions and Responses. All inquiries concerning this Solicitation shall be submitted in writing to the Authorized Contact Person(s) listed on the cover page and prior to the deadline listed on the cover page. Any material information given to one Offeror concerning a Solicitation will be furnished as an Addendum to all Offerors who have subscribed to this solicitation and available online on Austin Finance Online. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding.
- 2.3.2 Pre-Offer Conferences and Site Visits. The City may hold one or more Pre-Offer Conferences and/or Site Visits to review the contents of this Solicitation, provide access to applicable site conditions and/or to receive any questions concerning this Solicitation. If any Pre-Offer Conferences and/or Site Visits are planned, the date, location, and time for these meetings will appear on the Solicitation's cover page. Except for limited instances, attendance at Pre-Offer Conference and/or Site Visits are not mandatory. Mandatory Pre-Offer Conferences and or Site Visits will be indicated on the Solicitation's cover page. Failure to attend a Mandatory Pre-Offer Conference or Site Visit will subject the Offer to disqualification from consideration for award. Attendees to any Pre-Offer Conferences and/or Site Visits requiring reasonable accommodations shall contact the Authorized Contact Person as early as possible to arrange for such accommodations.
- 2.3.3 Solicitation Addenda and Versions. From the time the Solicitation is published and through the Due Date and Time for Offers, this Solicitation is subject to changes through the issuance of written Solicitation Addenda. Any Solicitation Addenda issued will identify all changes made to the Solicitation. With the publication of each Solicitation Addendum, the City will simultaneously publish the revised version of the Solicitation that includes all of the changes indicated in the Solicitation Addendum. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding.

2.4 OFFER PREPARATION AND CONTENTS

- 2.4.1 Offer Preparation or Participation Costs. All costs directly or indirectly related to preparation of an Offer as well as costs associated with any subsequent exchanges with the City, including but not limited to travel, lodging, food, presentation expenses and all other expenses related to the Offeror's participation in the competitive process, shall be the sole responsibility of the Offeror.
- 2.4.2 Alternate Offers. Alternate Offers will not be considered
- 2.4.3 Delivery Time. Delivery time, if stated as a number of days, will be based on calendar days. Time is of the essence in any City purchase. If the indicated date cannot be met or the date is not indicated, the Offeror shall state its best delivery time.
- 2.4.4 Exceptions. Exceptions that are taken to any portion of the Solicitation may jeopardize acceptance of the Offer.
- 2.4.5 Free on Board (FOB) Point. The Offeror should bid its lowest and best price, with the goods delivered to the place specified, at the Offeror's expense and risk, and there tender delivery to the City.
- 2.4.6 Payment. Payment terms shall be net 30 days.
- 2.4.7 Prices. Offers shall be firm unless otherwise specified. Pricing shall be entered on the Price Sheet in ink. Totals shall be entered in the "Total Price" column of the Price Sheet. In the event of a discrepancy between

unit price and extended price, the unit price shall govern.

- 2.4.8 Taxes. Purchases of Goods or Services for City use are usually exempt from City, State, and most Federal Taxes. Offers should not include exempted taxes. The successful Offeror should request a Tax Exemption Certificate from the Purchasing Office. Under no circumstances shall the City be liable to pay exempt taxes under any Contract.

2.4.9 Proprietary Information.

- A. All material submitted to the City becomes public property and is subject to the Texas Public Information Act, Texas Government Code Chapter 552, upon receipt.
- B. If an Offeror does not desire proprietary information in the Offer to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General.
- C. Failure to identify proprietary information will result in all unmarked sections being deemed nonproprietary and available upon public request. A copyright notice or symbol is insufficient to identify proprietary or confidential information.
- D. For Bids submitted in response to an Invitation for Bids (IFB), the City will not consider any requests to keep the contents of a Price Sheet proprietary or confidential.

2.5 OFFER SUBMISSION AND OPENING

- 2.5.1 Submission of Offers. Offers shall be received and time-stamped at the Purchasing Office reception desk, at the location below and by the Due Date and Time indicated on the Solicitation's cover page. The time stamp clock at the Purchasing Office reception desk shall be the official time of record and is verified daily with the local time service at (512) 476-7744. It is the sole responsibility of the Offeror to ensure timely delivery of the Offer. The City will not be responsible for failure of service on the part of the U.S. Postal Office, courier companies, or any other form of delivery service chosen by the Offeror.

- 2.5.2 Delivery. Mailing: Offers and Compliance Plans (when required by the Solicitation), must be returned in a sealed envelope or container marked on the outside with the:

Offeror's Name & Address
Solicitation Number
Due Date and Time

- A. Use the proper address as shown below:

Address for US Mail (Only)	Address for Fedex, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation #	Purchasing Office-Response Enclosed for Solicitation #
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

Note: Offers (including Utilization Plans) that are not submitted in a sealed envelope or container will not be considered.

- B. Unless authorized in the Solicitation, email, facsimile, or electronic Offers will not be accepted.
- C. Addendum: Receipt of an Addendum should be acknowledged by signing and returning the Addendum with the Offer or under separate cover prior to the Due Date. The Addendum should be returned with the Offeror's name, address, the Solicitation number, and the Due Date and Time.

2.5.3 Documents required with Offer. Failure to submit any document required in the solicitation may be grounds to reject the Offer.

2.5.4 Modification or Withdrawal. Offers that have been timely received by the City may be modified in writing. Offers may be withdrawn in writing, in person, by email or by facsimile, provided that the facsimile is signed by the Offeror, at any time prior to the Solicitation's Due Date and Time. An Offeror may also withdraw an Offer in person, provided the withdrawal is made prior to the Due Date and Time. When an Offer is withdrawn, the Purchasing Office will provide the Offeror with a receipt documenting the withdrawal, which must be acknowledged in writing by the Offeror. Withdrawn Offers may be resubmitted, with or without modifications, up to the Solicitation's Due Date and Time.

2.5.5 Late Offers. All Offers received after the Due Date and Time are considered late and will be rejected. Late Offers that are inadvertently received by the City shall be returned to the Offeror. It is the responsibility of the Offeror to ensure that their Offer arrives at the proper location by the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. The City may, at its sole discretion, accept a late Offer if the City's misdirection or mishandling was the sole or main cause for the Offer's late receipt at the designated location.

2.5.6 Rejection of Offers: The City reserves the right to reject any or all Offers and to waive any minor informality in any Offer or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Offer).

2.5.7 Public Bid Opening. The Purchasing Office representative responsible for opening Bids shall confirm the time and announce the Bid opening. The representative shall then personally and publicly open all Bids timely received, reading each Bid aloud. Following the Bid opening, the City will post on the City's website the Price Sheets from all timely received Bids.

2.6 EVALUATION OF BIDS

2.6.1 Minimum Responsiveness - IFB. Bids are Minimally Responsive when they include all of the Submittals required in this Solicitation. Bids that are not Minimally Responsive may be rejected.

2.6.2 Evaluation. Offerors may furnish pricing for all or any portion of the Solicitation (unless otherwise specified). However, the City may evaluate and award the Contract for any item or group of items shown on the Solicitation, or any combination deemed most advantageous to the City. Offers that specify an "all or none" award may be considered if a single award is advantageous. An Offer containing prices significantly lower than all other Offeror's prices for an item will present a rebuttable presumption of irresponsibility.

2.6.3 Award. Invitations for Bids will be awarded to the Lowest Responsive Responsible Offeror. Invitation for Bids – Sale will be awarded to the Highest Responsive Responsible Offeror.

2.6.4 Local Business Presence.

A. A firm is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

B. If the City receives a competitive sealed bid from an offeror who has Local Business Presences and

whose bid is within three percent of the lowest bid price received from an offeror who does not have Local Business Presence, the City may enter into a contract with the local vendor.

2.6.5 Acceptance of Bid. Acceptance of a Bid for an open market purchase for supply or service Master Agreement will be by a Purchase Order or a Contract as appropriate. Subsequent Delivery Orders may be issued as appropriate. The contents of a Bid shall become a part of the Purchase Order/Contract. Under no circumstances will the City be responsible for Goods or Services provided without an acceptance signed by or authorized by an Authorized City Representative.

2.6.6 Contract Incorporation. Offeror should be aware that the contents of the successful Offer will become a part of the subsequent contractual documents. Failure of the successful Offeror to accept this obligation may result in the cancellation of any award. Any damages accruing to the City as a result of the successful Offeror's failure to contract may be recovered from the successful Offeror.

2.6.7 **RESERVATIONS:** The City expressly reserves the right to:

- A. specify approximate quantities in the Solicitation;
- B. extend the Solicitation closing date and time;
- C. waive as an informality, minor deviations from specifications provided they do not affect competition or result in functionally unacceptable Goods or Services;
- D. waive any minor informality in any Offer or Solicitation procedure (a minor informality is one that does not affect the competitiveness of the Offeror);
- E. add additional terms or modify existing terms in the Solicitation;
- F. reject an Offer containing exceptions, additions, qualifications or conditions not called for in the solicitation;
- G. reject an Offer received from an Offeror who is currently debarred or suspended by the City or State;
- H. reject an Offer received from an Offeror who is currently debarred or suspended by the Federal Government (Applicable if project receives Federal funding);
- I. reject an Offer that contains fraudulent information;
- J. reject an Offer that has material omissions;
- K. reject or cancel any or all Offers;
- L. reissue a Solicitation;
- M. procure any item by other means;
- N. consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; and/or
- O. reject an Offer because of unbalanced unit prices.

2.7 POST-SOLICITATION PROCESSES

2.7.1 Availability of Records. The Procurement File, including documents related to the Solicitation, all Bids received, exchanges with the Offerors, except for Bid contents deemed by Offerors to be proprietary information in accordance with applicable State law, will be available from the Purchasing Office for public inspections upon the City's recommendation of award.

2.7.2 Debriefings. Offerors may request a debriefing meeting to ask any questions concerning the Solicitation's contents, process or the evaluation of their Bid. Debriefing meetings are informal exchanges and may be

requested anytime following, but not later than 2 years after the Award Recommendation or Cancellation of the Solicitation. Debriefings are not public called meetings in accordance with the Texas Open Meetings Act and are usually limited to a single Offeror and any of their representatives. Only information regarding the Offeror's Bid and any other documentation that is publicly available at the time of the meeting will be discussed. Information provided during a Debriefing shall not form the basis for a protest under section 2.1.6.

2.7.3 Interested Parties Disclosure.

As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/cit_info_form1295.htm

2.7.4 Certificates of Insurance. When insurance is required, the Offeror must provide proof of coverage prior to execution of a Contract. The Offeror shall provide Certificates of Insurance in the amounts and for the coverages required to the Purchasing Office within 14 calendar days after written request from the City.

2.7.5 Bonds. When Bonds are required, the Offeror must provide the bonds prior to the execution of the Contract. The Offeror shall provide the Bonds, in the amounts and on the conditions required, within 14 calendar days after notification of award, or as otherwise required by the Solicitation.

2.7.6 Chapter 176 Conflict of Interest Disclosure. In accordance with Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/department/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

13. PAYMENT:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

- 14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. AUDITS and RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
 - i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
 - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
 - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

30. DELAYS:

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

- A. Definitions:
 - i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
 - ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

- A. General Requirements.
 - i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
 - ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

48. **DISPUTE RESOLUTION:**

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

55. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

- iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

56. PROHIBITION OF BOYCOTT ISRAEL VERIFICATION

Pursuant to Texas Government Code §2270.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this **Contract**.

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2270.001.
- B. If the **Principal Artist** qualifies as a "company", then the **Principal Artist** verifies that he:
 - i. does not "boycott Israel"; and
 - ii. will not "boycott Israel" during the term of this **Contract**.
- C. The **Principal Artist's** obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

NOTES: DELETE THIS PAGE OF INSTRUCTIONS AND ALL INSTRUCTION BOXES BEFORE PRINTING YOUR DOCUMENT.

1. Buyers must use the appropriate supplemental provisions. If a provision is not needed or is included in Section 0600 (e.g. Anti-lobbying), delete the entire provision and ensure that the paragraphs renumber correctly. Delete all instruction boxes. Please also check your page breaks and fix them as needed.

2. **Additional insurance requirements:** Call Benny VandenAvond in Risk Management (x 43264).

A. **Construction Projects:** For all Construction projects, you must use the Contract Management Department Front End Documents. Insurance requirements are included in Sections 00650 (insurance form), 00700, Article 5.2, and 00810, Article 5 (insurance matrix).

B. **Property Insurance:** If City-owned real or personal property is in the care, custody and control of the Contractor, call *Benny VandenAvond* in Risk Management (x 43264) to discuss the minimum coverage requirements, and add the following paragraph to the specific requirements section (i.e., paragraph 3.B).

(#). Property Insurance: The Contractor shall provide All Risk Property coverage including, but not limited to, fire, wind, hail, theft, vandalism, and malicious mischief for all real and personal property owned by the City and in the care, custody, and control of the Contractor. The City shall be added to the property policy as a Loss Payee as their interest may appear.

C. **Hazardous Material:** Call Benny VandenAvond in Risk Management (x 43264) to discuss the potential exposure and insurance requirements.

D. **Professional Liability:** If your project requires professional liability insurance, call Risk Management (i.e., Benny VandenAvond). Below is a sample of the language we've used in the past. Add this language to paragraph 3.B.

(#). Professional Liability Insurance: The Contractor shall provide coverage, at a minimum limit of \$_____ per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by [Indicate a suspense date for inquiries, e.g. at least fifteen (15) days prior to the Solicitation Due Date or the day following the Pre-Bid/Proposal/Response conference...]

2. **ALTERNATE OFFERS:** (reference paragraph 7A in Section 0200)

Alternate Offers will be considered.

Select applicable section below if Insurance is required or Insurance is not required.

3. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

OR

PURInsuranceCompliance@austintexas.gov

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
- 4. **INSURANCE:** Insurance does not apply to this solicitation.
- 5. **BID / PROPOSAL / RESPONSE BOND: ("BOND") (Applicable to procurements requiring a Payment and/or Performance Bond)**
 - A. All Offers shall be accompanied by a Bid / Proposal / Response Bond in an amount of not less than five percent (5%) of the total Offer. The Bid / Proposal / Response Bond must have a Power of Attorney attached, issued by a solvent surety authorized under the laws of the State of Texas and acceptable to the City.
 - B. The Bid / Proposal / Response Bond accompanying the Offer of the apparent successful Offeror will be retained until a Contract is awarded and the successful Offeror executes the Contract and furnishes any required bonds and insurance, after which the Bid / Proposal / Response Bond will be returned to the Offeror. The Bid / Proposal / Response Bond provided by the next lowest or next Best Offeror will be retained until a Contract is awarded. All other Bid / Proposal / Response Bonds will be returned within a reasonable amount of time necessary to make an award recommendation.
- 6. **BID / PROPOSAL / RESPONSE GUARANTY: (Applicable to procurements that do not require a Payment and/or Performance Bond)**
 - A. All Bids / Proposals / Responses shall be accompanied by a Bid / Proposal / Response guaranty in an amount of \$. The only acceptable Bid / Proposal / Response guaranty will be a Bid /

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

Proposal / Response bond with Power of Attorney attached, issued by a solvent surety authorized under the laws of the State of Texas and acceptable to the City, a Cashiers check, or a money order.

- B. The Bid / Proposal / Response guaranty accompanying the Offer of the apparent successful Offeror will be retained until a Contract is awarded and the successful Offeror executes the Contract and furnishes any required insurance, after which the Bid / Proposal / Response guaranty will be returned to the Offeror. The Bid / Proposal / Response guaranty accompanying the next lowest or next Best Offeror will be retained until a Contract is awarded. All other Bid / Proposal / Response guaranties will be returned within a reasonable amount of time necessary to make an award recommendation.

7. **PAYMENT BOND: (May also include a Bid / Proposal / Response Bond / Guaranty – see paragraph 5 above)**

- A. The Contractor shall provide a Payment Bond in an amount equal to _____ % of the Contract amount within _____ calendar days (14 unless a different period is inserted) after notification of award. The Payment Bond serves as security for the faithful payment of all of the Contractor's obligations for subcontracts, work, labor, equipment, supplies, and materials furnished under the Contract. The Payment Bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.
- B. The Payment Bond shall remain in effect throughout the term of the Contract, and shall be renewed for each respective extension.

8. **PERFORMANCE BOND: (Must also include a Bid / Proposal / Response Guaranty / Bond – see paragraph 5 above)**

- A. The Contractor shall provide a Performance Bond in an amount equal to _____ % of the Contract amount within _____ calendar days (14 unless a different period is inserted) after notification of award. The Performance Bond serves as security for the faithful performance of all of the Contractor's obligations under the Contract. The Performance Bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.
- B. The Performance Bond shall remain in effect throughout the term of the Contract and shall be renewed for each respective extension.

9. **FIDELITY BOND:**

- A. The Contractor shall provide a Blanket Position Fidelity Bond in an amount equal to _____ % of the Contract amount within _____ calendar days (14 unless a different period is inserted) after notification of award. The Blanket Position Fidelity Bond shall cover each employee who handles money or safeguards assets and the Contractor agrees to make, and pursue to conclusion, a claim against such bond when an employee is found to have violated the bond provisions.
- B. The Fidelity Bond shall remain in effect throughout the term of the Contract, and shall be renewed for each respective extension.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

10. **TERM OF CONTRACT:**

- A. (The following Unilateral contract extension option language is to be used for all contracts except corporate (citywide) contracts): The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of _____ months. The Contract may be extended beyond the initial term for up to _____ additional _____ month periods at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract. (For corporate (citywide) contracts and other contracts where sensible to do so, instead use the Automatic contract extension option language as follows): The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of _____ months. The Contract may be extended automatically beyond the initial term for up to _____ additional _____ month periods at the City's sole option unless the Contractor is notified in writing no less than _____ days prior to the contract's expiration. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract. Any hold over period will not exceed 120 calendar days unless mutually agreed on by both parties in writing.
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
- D. Prices are firm and fixed for the first _____ months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.

11. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

12. **DELIVERY REQUIREMENTS:**

Location:

Days:

- A. Delivery is to be made within _____ calendar days after the order is placed (either verbally or in writing). All orders must be shipped complete unless arrangements for partial shipments are made in advance.
- B. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
- C. The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- D. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see paragraph 51 in Section 0300).

13. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	
Attn:	
Address	
City, State Zip Code	

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

14. **RESTOCKING FEES:**

- A. The Contractor may bill the City restocking fees (if included in their Offer) for parts that are ordered by the City under the contract and returned for refund. The Contractor is not obligated to accept for refund any part that is not resalable and/or not in the same condition as when purchased.
- B. Restocking fees may be charged to the City when multiple parts or groups of parts are returned for refund at one time due to the City inventory warehouse cleaning, unless these parts are returned at an annual pre-arranged date. The date for the annual return shall be mutually agreed upon between the City and the Contractor.

15. **LIQUIDATED DAMAGES:** Time is of the essence in the performance of the Contract; therefore, the Contractor shall strictly adhere to the Contract delivery schedule. No changes in the delivery schedule shall be effective unless in writing executed by both the City and the Contractor. The parties agree that if, due to no fault of the City, delivery of any material or performance of any service is delayed beyond the time specified in the Contract, the actual damages sustained by the City because of such delay will be uncertain and difficult to determine, and that the reasonable foreseeable damage incurred by the City is hereby stipulated to be \$ per calendar day. The Contractor therefore agrees to pay, and the City agrees to accept, as liquidated damages, the sum of \$ per calendar day for each calendar day of delay.

16. **RETAINAGE:** The City will withhold percent (%) retainage until completion of all work required by the Contract. The Contractor's invoice shall indicate the amount due, less the retainage. Upon final acceptance of the work, the Contractor shall submit an invoice for the retainage to the City and payment will be made as specified in the Contract. Payment of the retainage by the City shall not constitute nor be deemed a waiver or release by the City of any of its rights and remedies against the Contractor for recovery of amounts improperly invoiced or for defective, incomplete or non-conforming work under the Contract.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

17. MATERIALS SPECIFICATIONS/DESCRIPTIVE LITERATURE:

- A. If a solicitation refers to a Qualified Products List (QPL), Standard Products List (SPL) or a manufacturer's name and product, any Offeror offering products not referenced in the solicitation must submit as part of their Offer materials specifications/descriptive literature for the non-referenced product. Materials specifications/descriptive literature must be identified to show the item(s) in the Offer to which it applies.
- B. Materials specifications/descriptive literature are defined as product manufacturer's catalog pages, "cut sheets" applicable tests results, or related detailed documents that specify material construction, performance parameters, and any industrial standards that are applicable such as ANSI, ASTM, ASME, SAE, NFPA, NBS, EIA, ESL, and NSA. The submitted materials specifications/descriptive literature must include the manufacturer's name and product number of the product being offered.
- C. The failure of the materials specifications/descriptive literature to show that the product offered conforms to the requirements of the Solicitation shall result in rejection of the Offer.
- D. Failure to submit the materials specifications/descriptive literature as part of the Offer may subject the Offer to disqualification from consideration for award.

18. SAMPLES – EXACT REPLICA:

- A. The Offeror shall submit an exact replica of the goods to be provided per specification _____. This sample shall be provided within _____ working days after request by the City.
- B. Send samples to the City at the following address:

City of Austin	
Department	
Address	
City, State Zip Code	
Attn:	

- C. All products provided to the City under this solicitation will be evaluated or tested and must meet all requirements of the specification, regardless of whether or not all requirements are to be evaluated or tested.
- D. Samples will be provided at no cost to the City, will be retained by the City, and may be used for use in assuring compliance with materials specifications after award. Failure to supply samples when requested shall subject the Offer to disqualification from consideration for award.
- E. Samples will be evaluated or tested as follows:

(Describe the evaluation or tests to be conducted. Don't state that evaluations or tests will be conducted that you do not actually intend to conduct. Don't state that evaluations or tests will be conducted that require equipment or facilities you do not have access to. Be realistic.)

19. SAMPLES – REPRESENTATIVE:

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- A. The Offeror shall submit a representative sample of the goods to be provided per specification _____. This sample shall be provided within _____ working days after request by the City. At a minimum, the representative sample shall reflect the following:

(List and describe minimum requirements here.)

- B. Send samples to the City at the following address:

City of Austin	
Department	
Address	
City, State Zip Code	
Attn:	

- C. The Offeror must also submit with the sample a statement from the manufacturer that guarantees the goods will be manufactured in accordance with the City specifications and that delivery requirements will be met. Failure to do so may subject the Offer to disqualification from consideration for award.
- D. All products provided to the City under this solicitation will be evaluated or tested and must meet all requirements of the specification, regardless of whether or not all requirements are to be evaluated or tested.
- E. Samples will be provided at no cost to the City, will be retained by the City, and may be used in assuring compliance with materials specifications after award. Failure to supply samples when requested shall subject the Offer to disqualification from consideration for award.
- F. Samples will be evaluated or tested as follows:

(Describe the evaluation or tests to be conducted. Don't state that evaluations or tests will be conducted that you do not actually intend to conduct. Don't state that evaluations or tests will be conducted that require equipment or facilities you do not have access to. Be realistic.)

20. **SAMPLES – QUALIFIED PRODUCTS LIST (QPL) and/or STANDARD PRODUCTS LIST (SPL):**

- A. The Offeror shall submit a sample of all proposed “equal” non-QPL and/or non-SPL products included in the Offer. The City reserves the right to test any “equal” non-QPL and/or non-SPL product that is offered prior to determination of award. If the amount of time required for testing exceeds ten (10) calendar days from the date of receipt of the sample, the City may award to Offerors with pretested products. The product will still be tested and if it meets specifications, will be added to the QPL and or SPL for future Solicitations.
- B. Send samples to the City at the following address:

City of Austin	
Department	
Address	
City, State Zip Code	
Attn:	

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- C. Products that are not pretested must be available within forty-eight (48) hours after Solicitation Due Date at no charge to the City for testing and evaluation.
- D. All products (except brand-name) provided to the City under this Solicitation will be evaluated or tested and must meet all requirements of the specification, regardless of whether or not all requirements are to be evaluated or tested.
- E. Samples will be provided at no cost to the City, will be retained by the City, and may be used in assuring compliance with materials specifications after award. Failure to supply samples when requested shall subject the Offer to disqualification from consideration for award.
- F. Samples will be evaluated or tested as follows:

(Describe the evaluation or tests to be conducted. Don't state that evaluations or tests will be conducted that you do not actually intend to conduct. Don't state that evaluations or tests will be conducted that require equipment or facilities you do not have access to. Be realistic.)

21. HAZARDOUS MATERIALS:

- A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Material Safety Data Sheets (MSDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
- B. Failure to submit the MSDS as part of the Offer may subject the Offer to disqualification from consideration for award.
- C. The MSDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.

22. RECYCLED PRODUCTS:

- A. The City prefers that Offerors offer products that contain recycled materials. When a recycled product is offered by the Offeror, the Offeror must state in their Offer the percentage of the product that is recycled and must include a list of the recycled materials that are contained in the product.
- B. The recycled content of paper products offered to the City shall be in accordance with the Federal Environmental Protection Agency's Recycled Product Procurement Guidelines. These guidelines are available at <http://www.epa.gov/cpg/>.
- C. Contract award for paper products will be made for recycled products unless the cost is more than 10% above the lowest price for non-recycled paper products as required in the City's Comprehensive Recycling Resolution.

23. PUBLISHED PRICE LISTS:

- A. Offerors may quote using published price lists in the following ways:
 - i. Offerors may quote one discount from a Published Price List for all offered items to be covered in the Contract. The discount must remain firm during the life of the Contract.
 - ii. Offerors may quote their dealer cost, plus a percentage markup to be added to the cost. The percentage markup must remain firm during the life of the contract.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- B. Two (2) copies of the list upon which the discounts or markups are based shall be submitted with the Offer. All price lists identified in the Offer shall clearly include the Offeror's name and address, the solicitation number, prices, title of the discount and number, and the latest effective date of the price list. If the Offer is based on a discount or markup on a manufacturer's price list, the price list must also include the manufacturer's name, the manufacturer's latest effective date, and the manufacturer's price schedule. All price lists submitted become part of the Offer.
- C. The price list may be superseded or replaced during the Contract term only if price revisions are the result of the manufacturer's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the revised list must be submitted to the Buyer in the Purchasing Office with the effective date of change to be at least calendar days (30 unless a different period is inserted) after written notification. The City reserves the right to refuse any list revision.
- D. The discounts or markups on equipment rental, material, supplies, parts, and contract services shall be fixed throughout the term of the Contract, and are not subject to increase.
- E. Failure to submit written notification of price list revisions will result in the rejection of new prices being invoiced. The City will only pay invoices according to the last approved price list.

24. **LIVING WAGES:**

The City's Living Wage Program, Rule R161-17.14, is located at:

<http://www.austintexas.gov/edims/document.cfm?id=277854>

- A. The minimum wage required for all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract is \$15.00 per hour, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. The City requires Contractors submitting Offers on this Contract to provide a certification (**see the Living Wages Contractor Certification included in the Solicitation**) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$15.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- C. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).
- D. The Contractor shall provide to the Department's assigned Contract Manager with the first invoice, individual Employee Certifications for all Contractor Employees (and all tiers of Subcontracting) directly assigned to the contract. The City reserves the right to request individual Employee Certifications at any time during the contract term. Employee Certifications shall be signed by each Contractor Employee (and all tiers of Subcontracting) directly assigned to the contract. The Employee Certification form is available on-line at https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.
- E. Contractor shall submit employee certifications for Contractor Employees (and all tiers of Subcontracting) annually on the anniversary date of contract award with the respective invoice to

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

verify that employees are paid the Living Wage throughout the term of the contract. The Employee Certification Forms shall be submitted for Contractor Employees (and all tiers of Subcontracting) added to the contract and/or to report any employee changes as they occur.

- F. The Department's assigned Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records required in paragraph C above to verify compliance with this provision.
25. **PREVAILING WAGE:** Contractor shall comply with the requirements of Section 00830 Prevailing Wage Rates and Payroll Reporting including the wage rates listed in Section 00830BC Wage Rates for Building Construction or Section 00830HH Wage Rates for Heavy and Highway Construction.
26. **WORKPLACE CONDITIONS CODE ("CODE"):**
- A. The Austin City Council adopted Ordinance No. 20070621-152 on June 21, 2007, enacting the Workplace Conditions Code. The policy defined in this code applies to the procurement and laundering of apparel in City contracts exceeding \$5,000. Procurement includes contracts, purchases, rentals, leases, or allowances and voucher programs. Apparel refers to all garments or items of clothing any part of which is a textile produced by weaving, knitting or felting; and all shoes and other footwear as well as corresponding accessories.
- B. In this code:
- i. Contract means an agreement to procure equipment, goods, materials or supplies for an amount exceeding \$5,000 to be purchased or provided at the expense of the City, and shall be construed to incorporate the definition of Contract in the City's Standard Purchase Definitions.
- ii. Vendor means a person, partnership, corporation, or other entity that has a current procurement relationship, that is entering into a Contract with the City for the performance of all or some of the work included in the scope of services for the City, or is submitting an Offer to provide products or services to the City.
- iii. Worker means:
- (1) any employee of a Vendor who contributes to the provisions of goods to the City under a contract, including but not limited to any manufacturing or assembling of goods;
- (2) any individual who may be required or directed by any employers, in consideration of direct or indirect gain or profit, to engage in any employment, or to go to work or be at any time in any place of employment; and
- (3) includes individuals whose work is permanent or temporary, on a full-time or part-time basis, as a contractor or payroll employee.
- C. **Prohibition of Sweatshop Conditions:** A vendor who engages in or submits Offers for City contracts shall comply with the requirements in each subsection and may not supply goods or services to fulfill a City Contract except as provided below. These requirements shall be known as the Workplace Conditions Code.
- D. **Compliance with All Laws:** A Vendor shall comply with all federal, state, and local laws and workplace regulations, including those regarding benefits, workplace health and environmental safety, freedom of association, and the fundamental conventions of the International Labor Organization, including those regarding forced and child labor and freedom of association.
- E. **Harassment and Abuse:** A Vendor shall not engage in behavior that harasses or abuses a worker in a physical, sexual, psychological, or verbal manner. Nor shall a Vendor use corporal punishment in its employment practices.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- F. **Discrimination:** A Vendor shall not engage in discriminatory employment practices, as defined in Title 5 of the City Code, on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin in hiring, salary, benefits, advancement, disciplinary action, termination, or retirement. A Vendor shall not require pregnancy tests as a condition of employment nor demand pregnancy tests of employees. Women workers shall receive equal treatment and remuneration, including pay, benefits, and the opportunity to fill a position that is open to a male worker.
- G. **Exposure to Toxins:** A Vendor shall not expose a worker to toxic chemicals that may endanger a worker's health. A Vendor shall take appropriate measures to safeguard workers when any aspect of work requires exposure to any toxic chemical. If a federal, state, or local occupational safety or health law or regulation applies to the workplace condition, compliance with such a law or regulation is not a violation of this subsection.
- H. **Wages:** A Vendor shall pay wages that comply with the Living Wages Provision contained in this Solicitation.
- I. **Wage and Hour Records:** Vendors shall maintain verifiable wage and hour records for each production worker, employee or independent contractor.
- J. **Working Hours:** A vendor shall not require hourly and quota-based employees to work more than 48 hours per week or the limits on regular hours allowed by the law of the country of manufacture, whichever is lower. In addition, Vendors shall provide a worker with days off, as provided by applicable labor law.
- K. **Overtime Compensation:** A vendor shall not require a worker to work overtime hours unless the worker is paid at a rate of at least one-and-one-half their regular hourly compensation rate as provided by the federal Fair Labor Standards Act.
- L. **Termination:** A vendor shall provide for a mediation or grievance process to resolve workplace disputes if required by federal law.
- M. **Closure to Avoid Compliance:** A vendor may not close or reduce orders for a production facility:
- i. as a punitive measure against workers for exercising their right to freedom of association; or
 - ii. to avoid its responsibility to take corrective action after there has been a determination that there was a violation of the Workplace Conditions Code.
- N. **Vendor Recordkeeping Requirements:**
- i. Each City contract shall include the contractor's agreement to comply with the requirements of this Code and shall incorporate this Code by reference.
 - ii. For every Offer or Contract for production of goods or provision of services covered by this policy, each Offeror or Contractor shall submit to the City the following:
 - (1) An affidavit setting forth the following information (**see the Workplace Conditions Affidavit included in the Solicitation**):
 - (a) The country of production and names, physical addresses and phone numbers of each facility involved in the production of goods or provision of services covered by this policy, which shall be updated to show any changes in Subcontractors or facilities during the term of the Contract; and
 - (b) An initial copy of each facility's standard payroll records, including the minimum base hourly wage of non-supervisory production employees, percent of wage level paid as health benefit, other benefits, regular deductions from paychecks, normal

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

working hours per day and week, actual working hours per day and week, and overtime policy if any.

- (2) An agreement in which the Contractor commits to the following:
 - (a) That the Contractor and each proposed supplier or Subcontractor will adhere to the Workplace Conditions Code;
 - (b) That a copy of this Code has been furnished to each of the Contractor's suppliers or Subcontractors; and
 - (c) That the Contractor has required each supplier to post a copy of this Code, including a procedure for filing complaints, in a location that is visible, obvious, and accessible in the workplace and translated into the each worker's first language; and
 - (3) A description of any claims or legal actions related to discrimination or worker wages, hours, or working conditions filed against the Contractor in any local, state, or federal administrative agency or court in the preceding five years; and
 - (4) Any other information deemed necessary by the City for the administration and enforcement of this policy.
- iii. Each Contractor shall retain the documents described in Subsection (N) for a period of three (3) years after the date that the City contract is terminated.
 - iv. Each Contractor shall maintain regular payroll records and make such records available to the City or its agents upon the City's request. If the City makes a request under this subsection for the Contractor's payroll records, the Contractor shall also produce the payroll records of its Subcontractors or suppliers to the City or its agents. The City may make such a request directly to a Subcontractor who shall be required to submit such records directly to the City or its agents on request. If requested by the City or its agents, all payroll records shall be accompanied by a statement signed by the Contractor, stating that the records are complete and accurate.
 - v. During each year of the term of a Contract, the City or its agents may request a written assurance from the Contractor and each of its Subcontractors that the Contractor and its Subcontractors and suppliers are in compliance with this Code. The Contractor shall provide the written assurance within the time period specified by the City or its agents, which shall not be less than fourteen (14) calendar days from the receipt of the request. A written assurance containing false or inaccurate information constitutes a breach of Contract.
 - vi. All records required to be maintained by this Code shall at all times be open to inspection and examination of the duly authorized officers and agents of the City.
- O. **Compliance; Verification:** Each Contractor shall cooperate fully with an investigation by the City or its agents. An investigation may include random site inspections of any worksite on which all or a portion of the Contract is performed, access to workers to discuss compliance with this Code, and access to any record required to be maintained by this Code.
- P. **Enforcement; Penalties:**
- i. **Complaints:** Any person may complain of a violation of this Code. The City, including its agent designated for this purpose, shall receive and investigate complaints.
 - ii. **Requests for Information:** Upon receiving a complaint alleging noncompliance with this Code, the City shall contact the Contractor in a timely manner, by certified letter, that the Contractor or its Subcontractor is the subject of the complaint. The City shall describe the alleged violation and the requirements for responding to the notice. The Contractor must respond in a timely manner with evidence that the violation did not occur, or if it did, a detailed plan for corrective action.
 - iii. **Access to Production and Distribution Facilities:** For administration and enforcement purposes, a City Contractor shall provide the City with immediate access to a facility or operation that is the subject of a complaint in order to inspect the facility or its operations and records, or to interview workers.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- iv. **Independent Audit:** If the City is unable to verify compliance, it may require an independent audit at the expense of the Contractor, followed by a public report verifying either that the violation did not occur, or in the event that a violation did occur, that corrective action has or has not been effective.
 - v. **Remediation:** On a finding that a violation of this Code has occurred at a Contractor's production facility, the City and the Contractor shall meet to consult to develop to a remediation plan, of which the City shall have right of approval as set forth in the City's Standard Purchase Terms and Conditions. Corrective action shall include all steps necessary to correct the violations, including:
 - (1) providing prompt notice to workers in the first language of each worker of the remediation plan and the prescribed corrective actions;
 - (2) paying back wages to workers who worked to manufacture products or services supplied to the City; or
 - (3) re-instating a worker who has been dismissed in violation of the law.
 - vi. **Training On Workplace Conditions:** At a facility or operation of a Contractor determined to be in violation of this Code, the Contractor shall provide workplace rights training for workers and best practices training for supervisory and management staff. The Contractor shall bear the expense of the training. Upon the City's request, the Contractor shall submit its training materials to the City for its review and approval before distribution to supervisors, managers, and employees.
 - vii. **Summary of Corrective Actions:** The City may require that a Contractor provide a written summary of the steps taken to remedy noncompliance with this code. The summary may include any difficulties encountered in attempting to correct noncompliance. The Contractor shall provide the written summary within the time period specified by the City.
 - viii. **Sanctions:** The City may impose sanctions if a Contractor knowingly provides misinformation or falsified information to the City or if a Contractor refuses to remedy a violation of this Code in a timely manner. Sanctions may include termination of the Contract for cause due to breach of contract, termination of a Contract without notice, financial penalties, debarment from eligibility to submit Offers on City Contracts, or suspending the Contractor's ability to submit Offers on City Contracts for a period to be determined by the City Manager.
 - ix. **Debarment and Suspension:** In the event that a Contractor is debarred, the City Purchasing Officer will remove the Contractor from the City's Vendor List. In the event of suspension, the Purchasing Officer will remove the Contractor from the list for the period specified in the non-compliance sanction.
 - x. **Protest:** A Contractor may protest findings, sanctions, penalties, suspension or debarment under this Code as prescribed in the City's Solicitation (see Protest Procedures in Section 0200 of the Solicitation).
27. **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:**
- A. On June 14, 2018, the Austin City Council adopted Ordinance No. 20180614-056 replacing Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly had communication restricted in the ordinance section 2-7-104 during the No-Lobbying Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf and is also included in the Solicitation, [Section 0200 V2, Solicitation Instructions June 26, 2018](#).
28. **NON-SOLICITATION:**

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- A. During the term of the Contract, and for a period of six (6) months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.
- B. In the event that a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.
- C. During the term of the Contract, and for a period of six (6) months following termination of the Contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.
- D. In the event that a breach of Paragraph C occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) percent of the employee's annual compensation while employed by the Contractor.

Use only one of the following WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID) PROVISIONS and delete the other.

29. **WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel").
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report.].
 - i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;
 - ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
 - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- D. Contractor shall provide the City a Certified Criminal Background Report affirming that Contractor has conducted required security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel during the execution of the work.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) calendar days of the receipt of notification of denial.
- G. Contractor's personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.
- H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
- I. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
- J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).

30. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Access to the (Add Department name) Department building by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the (Add Department name) building at least thirty (30) days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving the (Add Department name) building and security badges must be on display at all times when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.

31. NURSERY/FLORAL CERTIFICATE FOR LANDSCAPERS AND PLANT VENDORS:

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- A. The Contractor shall provide a current Nursery/Floral certificate issued by the Texas Department of Agriculture to sell, lease, or distribute nursery products and/or floral items in accordance with Texas Administrative Code, Title 4, Part 1, Chapter 22, Rule 22.3.
- B. A copy of the Contractor's current and valid certificate must be provided to the Buyer prior to award of a contract. Contractor will have 7 calendar days after notification by the City to provide a valid certificate.
32. **MONTHLY SUBCONTRACT AWARDS AND EXPENDITURES REPORT:** (reference paragraph 18 in Section 0300) (applicable when an MBE/WBE Compliance Plan is required)
- A. The Contractor must submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager specified herein and to the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Mail the Purchasing Office Copy of the report to the following address:
- City of Austin
Purchasing Office
Attn: Contract Compliance Manager
P. O. Box 1088
Austin, Texas 78767
33. **ECONOMIC PRICE ADJUSTMENT:**
- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first # of calendar days/months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed percent (%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
- i. The following definitions apply:
- (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
- ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
- (1) Utilize final Compilation data instead of Preliminary data
 - (2) If the referenced index is no longer available shift up to the next higher category index.
- iii. **Index Identification:** Complete table as they may apply. For multiple indexes copy the table below. Update each table with the correct information and delete these instructions.

Weight % or \$ of Base Price:	
Database Name:	
Series ID:	
<input type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area:	
Description of Series ID:	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal:	

- E. **Calculation:** Select the applicable method below (Single, Portion or Composite) and remove the others and these instructions. Price adjustment will be calculated as follows:

Single Index: Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

Adjustment of a Portion of the Base Price: A portion of the Base Price changes such that only part of the price is adjusted, while the balance of the Base Price remains fixed. The portion of the Base Price subject to adjustment is defined in D iii. above.

Index at time of calculation
Divided by index on solicitation close date
Equals change factor
Multiply the Base Price by the portion of Base Price subject to change = weighted portion
Multiply the weighted portion times the change factor
Equals the Adjusted Price for the portion of the Base Price subject to the Index change
Add the portion of the Base Price not subject to adjustment

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

Equals the Adjusted Price

Composite Indexes: Based on one or more weighted indexes reflecting pricing elements of a good or service. The weighted percentage for each index is defined in D iii. above.

For Each Index: Index at the time of calculation
--

Divided by each Index on solicitation close date
--

Equals change factor for each index

Multiply each Base Price of relevant line items by the percentage of price attributed to each index = weighted price
--

Multiply weighted price by change factor for each index

Equals the Adjusted Price for the portion of the Base Price subject to each Index

Add all adjusted prices for each item together
--

Equals Adjusted Price for each item

- F. If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

34. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

35. **BUY AMERICAN ACT – SUPPLIES:** (applicable to certain Contracts with Federal funding).

- A. In accordance with applicable Federal Regulations, the City is restricted from purchasing supplies that are not domestic end products, for use within the United States. Offerors shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the Buy American Act Certificate. (See Section 0300, paragraph 55 for additional guidelines).
- B. Offerors shall sign and return with their Offer, the **Buy American Act Certificate** included in the Solicitation.

36. **WORKING ON OR NEAR ENERGIZED EQUIPMENT – ARC FLASH PROTECTION (reference Section 0300 Paragraph 11. Compliance With Health, Safety, and Environmental Regulations):** Contractor's employees shall wear at all times the proper personal protective equipment and clothing required for the head, face, torso, arms, hands, and lower body that provides a minimum Arc Thermal Protection Value (ATPV) of 12 calories per square centimeter (cal/cm²) when working on or near energized electrical equipment, or greater, if required by the NFPA Standard 70E and/or Article 410 of the NESC for the work being performed.

36. **OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the Deliverables.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- A. **Patents:** As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights:** As to any Deliverable containing copyrighted subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such Deliverables, provided however, that nothing in this Paragraph 36 shall negate the City's sole or joint ownership of any such Deliverables arising by virtue of the City's sole or joint authorship of such Deliverables. Should by operation of law, such Deliverables not be considered work made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of Austin) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.
- C. **Additional Assignments:** The Contractor further agrees to, and if applicable, cause each of its employees to execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns, and nominees, the sole and exclusive right, title, and interest in and to the Deliverables. The Contractor's obligations to execute acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 36 A., B., and C. shall continue after the termination of this Contract with respect to such Deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the Deliverables, but should arise to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph above.

37. **PHARMACY SERVICES (applicable to all contracts providing direct pharmacy services (prescriptions provided directly to patients) to clients or employees of the City):** The Contractor is prohibited, subject to applicable laws, from permitting a pharmacist to refuse to fill a prescription due to a pharmacist's personal beliefs regarding the medication or the use of the medication. In the event that an individual pharmacist declines to fill a prescription based on personal belief rather than professional judgment, the store's pharmacy manager will take necessary steps to arrange to have the prescription filled without discrimination or delay (in the normal time frame for filling prescriptions that are in stock). In addition, the medications must be made available to the customer at the store at which the customer presented the prescription.
38. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

Delete the following for contracts with no anti-lobbying requirements:

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

C. SPECIFICATION/SCOPE OF WORK

1.0 **Purpose**

- 1.1 The purpose of this contract is to establish a contract with a single Dealer able to provide upholstery cleaning services with associated related maintenance for the City of Austin ("City") public use furniture. A Contract will be awarded to provide upholstery cleaning services with associated maintenance on an as-needed basis as stipulated in this solicitation. While the main department using this service will be the Austin Public Library, the City reserves the right to use this service for other departments as needed.

2.0 **Background**

Austin Public Library has 24 public facilities that are heavily used by the citizens. All of these facilities have an ongoing need for upholstery cleaning services. We strive to keep our facilities clean and welcoming, and this includes the public use lounge furniture. Each branch is unique to its neighborhood location, and although the Austin Public Library has and observes furniture standards, the Austin Public Library does not purchase furniture from a single vendor or manufacturer. Therefore, there are different types with different fabric approvals and specification requirements that must be adhered to. This includes specification of upholstery fabric that exceeds 60,000 double rubs, has Crypton finish, is non-permeable, soil resistant, wool, and/or of vinyl or leather materials. Upholstery fabric specifications will be provided by the Austin Public Library Coordinator or designee. The Austin Public Library expects to clean all of its public use furniture twice per year.

3.0 **Tasks/Requirements**

3.1 ***Contractor's Responsibilities***

- 3.1.1 The Contractor shall have an operational business regularly engaged in the business of providing furniture cleaning for a minimum of three (3) consecutive years within the last five (5) years.
- 3.1.2 In order to maximize downtime of City property, Contractor's facility shall be located within thirty (30) miles of the Texas State Capitol.
- 3.1.3 The Contractor shall have access to a facility with adequate warehouse space and equipped with supplies and equipment necessary to satisfy the requirements of the contract.
- 3.1.4 The Contractor shall have a minimum of two (2) upholstery service technicians, fully qualified to work on upholstery for lounge furniture, including leather, wool, crypton and vinyl fabric coverings. The Contractor shall be able to verify that all service technicians have had sufficient training with a minimum of three (3) years hands-on experience within the last five (5) years working in the upholstery cleaning sector.

- 3.1.5 The Contractor shall maintain a storage area that is secure from vandalism or theft, for all City items at the Contractor's location.
- 3.1.6 The Contractor shall transport (pick up and return) all City furniture and related components to and from the Contractor's place of business where the upholstery will be cleaning and repaired. Furniture in need of cleaning shall be picked up within one (1) working week after notification and returned within one (1) working week after completion of the cleaning. On occasion, the city may transport furniture items to and/or from the Contractor's place of business for upholstery cleaning services.
- 3.1.7 The Contractor shall perform all cleaning services on the Contractor's premises.
- 3.1.8 The Contractor shall assess the lounge furniture item and provide a firm written cost estimate to The Austin Public Library Coordinator or designee within two (2) working days after taking possession of the furniture item. The written cost estimate shall include:
- a. Estimated labor hours and cost
 - b. Confirmation the upholstery fabric can be cleaned without damage selection
 - c. Total cost to complete cleaning services including arms, legs and frame
 - d. Total amount of time needed to complete cleaning
 - e. Furniture item identification information
- 3.1.9 The Austin Public Library Coordinator or designee will provide written authorization (e.g. email) to proceed with the repairs after evaluating the estimate. The Contractor is not authorized to proceed with cleaning based on verbal authorizations and assumes all liability and responsibility for cleaning performed based on such verbal authorizations.
- 3.1.10 The Contractor shall submit a new cost estimate if the cost of the necessary cleaning increases from the original cost estimate due to deep soiling in the upholstery. The new cost estimate shall list the additional cleaning required and costs and shall be submitted in advance to the Austin Public Library Coordinator or designee for written (e.g. email) approval for the additional cleaning service.
- 3.1.11 The Contractor shall complete the cleaning within the timeframe indicated in the estimate, after receipt of The Austin Public Library Coordinator or designee written approval to proceed with the cleaning. If more time is required to complete the necessary cleaning, the Contractor shall request an extension in writing (e.g. email) that includes the reason for the extension and the date cleaning will be completed. The Austin Public Library Coordinator or designee must approve the Contractor's request for extension in writing (e.g. email).

- 3.1.12 The Contractor shall deliver the item clean, free of damages or any foreign odor (such as cigarette smoke), and ready to be reinstalled to the appropriate library branch location.
- 3.1.13 Upon receipt of the cleaned furniture item, the Austin Public Library Coordinator or designee will inspect the repairs for compliance with all contract requirements and ensure the cleaning was completed in a satisfactory manner. If, upon inspection, deficiencies are detected, the cleaning shall be rejected and the Contractor shall be required to make the necessary adjustments or correct the cleaning services at its own expense. This includes round trip transportation, if applicable.
- 3.1.14 If corrective work is required, the Contractor will arrange for pickup of the furniture item within two (2) business days of notification. Contractor shall complete corrective work within two (2) business days unless additional time is approved by the Austin Public Library Coordinator or designee in writing (e.g. email).
- 3.1.15 The Contractor shall be responsible for any damage by the Contractor or Contractor's Subcontractor to City equipment, buildings, and/or property. Any damage shall be repaired at the Contractor's expense.
- 3.1.16 The Contractor shall be responsible for risk of loss or damage to all furniture items in the care, custody, and control of the Contractor until accepted by The Austin Public Library Coordinator or designee.
- 3.1.17 The Contractor shall provide a point of contact for receiving orders from the City. A City representative from the Austin Public Library will contact the Contractor by e-mail, fax, or telephone to place an order for upholstery cleaning services. The request will include the furniture description, upholstery fabric type, and pick-up and delivery requirements.
- 3.1.18 The Contractor shall provide, upon request, a monthly and/or yearly total of all cleaning(s) performed for the Austin Public Library. The City prefers that the report be in an electronic format that may be sorted or another City-approved format. The report shall itemize furniture upholstery cleaning(s) by date, cost for labor (including hours and rates), total cost, and cleaned furniture item identification.
- 3.1.19 The Contractor shall notify the Contract Manager and The Austin Public Library Coordinator or designee of recall notices for cleaning agents, safety notices, or any applicable notice regarding the cleaning services. Failure to report this within one (1) working week after receipt of notice may result in cancellation of the contract.

3.2 **Work Hours**

The City will not pay off-shift rates for repairs performed. Off-shift hours are any hours other than Monday through Friday from 7:00 A.M. through 5:00 P.M. local time.

3.3 Mileage

Mileage is not reimbursable and shall not be billed. However, the Contractor may charge one flat fee as indicated on the Bid Sheet for pickup and delivery of items being cleaned on Contractor's premises.

3.4 City's Responsibilities

3.4.1 A request will be submitted by the Austin Public Library Coordinator or designee detailing location of furniture item(s), cleaning need, fabric specification, and pick-up time desired. The Austin Public Library Coordinator or designee will meet with the contractor on site to allow contractor access to the facility and confirm correct furniture for removal.

3.4.2 A repair tag will be completed by the City and attached to each item in need of cleaning. The Contractor shall not receive the item without this tag. The tag will consist of the following information:

- Purchase Order number
- Work Order number
- Telephone number
- City contact name
- Date requested
- Cleaning requested

3.4.3 All Library Branch location addresses are provided in Exhibit 1 and location will be confirmed prior to scheduling a pick up or delivery of furniture items.

4.0 Deliverables/Milestones

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference / Section
Pick up identified furniture items	Contractor provides transportation to pick up at specified location during specified time period.	One (1) working week of receipt of notice from City Coordinator.	City written approval	3.1.6
Cost Estimates	Contractor provides estimate of cost for transportation, labor, and cleaning.	Two (2) working days after taking possession of furniture item.	City written approval	3.1.8/3.1.10

Upholstery cleaning	Contractor completion of upholstery cleaning.	Within timeframe noted on estimate; more time necessitates notice with written authorization to proceed.	City written approval	3.1.12/ 3.1.13
Delivery of newly cleaned furniture	Contractor provides transportation and installation at specified location during specified time period after Library Coordinator inspects and approves completed work.	One (1) working week of receipt of notice of completion from contractor.	City written approval	3.1.6/3.1.14
Corrective Work due to deficiencies or rejected cleaning	Contractor submits new cost estimate and completes repairs	As indicated on estimate	City written approval	3.1.12/ 3.1.13/ 3.1.14
Recall notices, safety notices, any applicable notices	Contractor alerts Library coordinator or designee of any adverse notices that affects the upholstery or cleaning work provided on specified item	One (1) week of receipt of notice	City written approval	3.1.19

6.0 Appendices/Exhibits

Exhibit 1 Library Branch Locations

Exhibit 1

***UPHOLSTERY CLEANING SERVICES WITH ASSOCIATED MAINTENANCE
FOR FURNITURE UPHOLSTERY***

Austin Public Library Locations

1. **Carver Branch** – 1161 Angelina St. 78702
2. **Cepeda Branch** - 651 N. Pleasant Valley 78702
3. **Will Hampton Branch at Oak Hill** – 5125 Convict Hill Road 78749
4. **Hawson Branch** – 2500 Exposition Blvd. 78703
5. **Little Walnut Creek Branch** – 835 W. Rundberg Lane 78758
6. **Milwood Branch** – 12500 Amherst Drive 78727
7. **Manchaca Road Branch** – 5500 Manchaca Road 78745
8. **North Village Branch** – 2505 Steck Avenue 78757
9. **Old Quarry Branch** – 7051 Village Center Drive 78731
10. **Pleasant Hill Branch** – 211 E. William Cannon Drive 78745
11. **Ruiz Branch** – 1600 Grove Blvd 78741
12. **St. John Branch** – 7500 Blessing Avenue 78752
13. **Southeast Branch** – 5803 Nuckols Crossing Road 78744
14. **Spicewood Springs Branch** – 8637 Spicewood Springs Road 78759
15. **Terrazas Branch** – 1105 E. Cesar Chavez 78702
16. **Twin Oaks Branch** – 1800 S. Fifth Street 78701
17. **University Hills Branch** – 4721 Loyola Lane 78723
18. **Willie Mae Kirk Branch** – 3101 Oak Springs Drive 78702
19. **Windsor Park Branch** – 5833 Westminster Drive 78723
20. **Yarbrough Branch** – 2200 Hancock Drive 78756
21. **Zaragoza Warehouse** – 635 N. Pleasant Valley Road 78702

22. **New Central Library** – 710 W. Cesar Chavez 78701

23. **Austin History Center** - 810 Guadalupe 78701

D. CONTRACT DOCUMENT

The following will form the basis of the resulting contract.

[Intentionally left blank]

CITY OF AUSTIN

CONTRACT

For

UPHOLSTERY CLEANING SERVICES FOR AUSTIN PUBLIC LIBRARY

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager and the City's Contract Manager for this engagement are listed on the contract price sheet.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described in Solicitation Section C : Specification/Scope of Work, which is hereby added to the contract as Exhibit A in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor shall be paid up to a total Not-to-Exceed amount equivalent to three times the total price amount of the contract price sheet (section F) for the initial Contract term and up to the total amount of the contract price sheet (section F) for each remaining extension options. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

3.2 **Economic Price Adjustment.**

3.2.1 **Price Adjustment.** Prices shown in this Contract shall remain firm for the first 12 months period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the

solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty-five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

3.2.2 **Effective Date.** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.

3.2.3 **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

3.2.4 **Indexes.** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

3.2.4.1 The following definitions apply:

3.2.4.1.1 **Base Period.** Month and year of the original contracted price (the solicitation close date).

3.2.4.1.2 **Base Price.** Initial period quoted, proposed and/or contracted per unit of measure.

3.2.4.1.3 **Adjusted Price.** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

3.2.4.1.4 **Change Factor.** The multiplier utilized to adjust the Base Price to the Adjusted Price.

3.2.4.1.5 **Weight %.** The percent of the Base Price subject to adjustment based on an index change.

3.2.4.2. **Adjustment-Requested Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:

3.2.4.2.1 Utilize final Compilation data instead of Preliminary data

3.2.4.2.2. If the referenced index is no longer available shift up to the next higher category index.

3.2.4.3 **Index Identification.** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Producer Price Index	
Series ID: pcu337121338121	
X Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: United States	
Description of Series ID: 51-6093 Upholsterers	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

3.2.5 **Calculation.** Price adjustment will be calculated as follows:

3.2.5.1 **Single Index.** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation

Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

3.3 **Delivery Requirements.**

3.3.1 Pickup and delivery shall be made as specified in the Scope of Work during City business hours Monday through Friday between the hours of 7:00 A.M. through 10:00 A.M., except for City-recognized legal holidays and weekends unless requested by the Austin Public Library in advance (see paragraph 52 in Section 0300 for City Holidays). Removal and Installation of furniture must be done during hours the branch is closed to the public.

3.4 **Invoices.**

3.4.1 The Contractor shall provide an itemized invoice to The Austin Public Library Coordinator or designee, upon completion of each cleaning. The invoice shall include the following information:

- 3.4.1.1 Date cleaning(s) were authorized
- 3.4.1.2 List of cleaning services performed
- 3.4.1.3 Date cleaning was completed
- 3.4.1.4 Number of hours associated with the cleaning
- 3.4.1.5 Cleaned furniture item identification

3.4.2 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be itemized and transportation charges, if any, shall be listed separately. Invoices shall be emailed to Library.ACAOFinance@austintexas.gov or mailed the below address:

	City of Austin
Department	Austin Public Library
Attn:	Randall Whited
Address	PO Box 22887
City, State, Zip Code	Austin, TX 78768-2287

3.4.3 Time billed for labor shall be limited to hours actually worked.

3.4.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.5 **Payment.**

3.5.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.5.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold

payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.5.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- 3.5.3.1 delivery of defective or non-conforming deliverables by the Contractor;
- 3.5.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- 3.5.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- 3.5.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- 3.5.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 3.5.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
- 3.5.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.5.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.5.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.6 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.7 **Final Payment and Close-Out.**

3.7.1 If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the project manager or contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

3.7.2 The making and acceptance of final payment will constitute:

- 3.7.2.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
- 3.7.2.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 36 months. The Contract may be extended beyond the initial term for up to two additional 12-month periods at the City's sole option.

4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

4.1.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City. The City shall only be in default under the Contract if it fails to make payment in accordance with Section 3.5 (Payment) of the Contract.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. In the event of a default caused by the City for non-payment, the Contractor shall have the right to immediately terminate the Contract. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise

legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 **General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

OR

PIRInsuranceCompliance@austintexas.gov

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.4 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.2 **Title & Risk of Loss.** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

5.3 **Right Of Inspection And Rejection.** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

5.4 **No Replacement Of Defective Tender.** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a

breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

5.5 Equal Opportunity.

5.5.1 Equal Employment Opportunity. No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.5.2 Americans With Disabilities Act (ADA) Compliance. No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.6 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.7 Delays.

5.7.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.7.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.8 Publications. All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Contractor shall provide a 1-month labor warranty for all cleaning services. A copy of the labor warranty shall be provided to The Austin Public Library Coordinator or designee with each delivery.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Quantities.** The quantities listed in the price sheet are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

7.4 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.5 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.5.1 disposal of major assets;

7.5.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.5.3 any significant termination or addition of provider contracts;

7.5.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.5.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.5.6 reorganization, reduction and/or relocation in key personnel;

- 7.5.7 known or anticipated sale, merger, or acquisition;
- 7.5.8 known, planned or anticipated stock sales;
- 7.5.9 any litigation against the Contractor; or
- 7.5.10 significant change in market share or product focus.

7.6 **Audits and Records.**

7.6.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.6.2 Records Retention:

7.6.2.1 Contractor is subject to City Code 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.6.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City

7.6.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.7 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.8 **Indemnity.**

7.8.1 Definitions:

7.8.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.8.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.8.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.8.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.8.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.9 Claims. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.10 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed to the appropriate contract manager listed in the Price Sheet

7.11 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.12 Advertising. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.13 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.14 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.15 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.16 **Prohibition of Boycott Israel Verification:** For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2270.001.

7.16.1 If the Contractor qualifies as a "company", then the Contractor verifies that it:

7.16.1.1 does not "boycott Israel"; and

7.16.1.2 will not "boycott Israel" during the term of this Contract.

7.16.2 The Contractor's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

7.17 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.18 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.19 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of

default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.20 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.21 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.22 **Dispute Resolution.**

7.22.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.22.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.23 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.23.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.23.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.23.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.24 **Subcontractors.**

7.24.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.24.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.24.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.24.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.24.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.24.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.24.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.24.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such

Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.24.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor

7.25 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.26 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.27 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.28 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.29 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government,

as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.30 Interlocal Purchasing Agreements.

7.30.1 The City has entered into Interlocal Purchasing Agreements with other governmental agencies pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible agencies that have an interlocal agreement with the City.

7.30.2 The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

7.31 **Entire Agreement:** This Contract, together with the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, and any addenda and amendments thereto constitutes the entire agreement between the parties, and this Contract shall not be modified, amended, altered, or changed except with the written consent of the parties.

Included Exhibits:

Exhibit A – Specification/Scope of Work as per solicitation Section C

REQUIRED SUBMITTALS

The following forms should be completed and returned with your bid if applicable. The Offer and Acceptance form and Price Sheet **MUST** be completed, signed, and returned in order to be considered for award.

E. OFFER & ACCEPTANCE SHEET - MUST BE COMPLETED, SIGNED, AND RETURNED WITH YOUR OFFER TO BE CONSIDERED FOR AWARD

The undersigned, by his/her signature, represents that he/she is submitting a binding Offer and is authorized to bind the Offeror to fully comply with the Solicitation document contained herein.

By submitting this Offer, the Offeror hereby certifies the following:

1. That it has reviewed and agrees to all documents contained in the final solicitation documents including all addenda issued prior to the solicitation closing.
2. That its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.
3. That it has not in any way directly or indirectly:
 - a. Colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
 - b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.
4. That it has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
5. That it has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract no individual, agent, representative, consultant, subcontractor, or sub-consultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
6. That it is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.
7. That it does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;
8. That it has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$100 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror.

9. That it does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation with any solicitation responses on separate pages to be annexed hereto.

OFFER

Company Name: K&M Steam Cleaning
Company Address: 8910 Research Blvd., B-2
City, State, Zip: Austin, Tx 78758
Vendor
Registration No. V00000956726
Printed Name of Officer or
Authorized Representative: Ken Moncebaiz
Title: President
Signature of Officer or
Authorized Representative: [Signature]
Date: 3.12.19
Email
Address: handmsteamcleaning@sbcglobal.net
Phone
Number: 512.836.8900

ACCEPTANCE

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as Contract No. _____.

CITY OF AUSTIN

Awarded this _____ day of _____, 20__

Signature

Printed Name and Title of Authorized Person

Date

F. PRICE SHEET

Invitation for Bids 5800 SMW1001REBID

Upholstery Cleaning Services for Austin Public Library

Item No.	Description	Estimated Quantity	Unit	Unit Price	Extended Price
1	Flat fee for round-trip pick-up and delivery of City furniture	50	Per trip	280	\$14000
2	Labor rate per unit for services provided during normal business hours for seat pads	264	Per Piece	6	\$1584
3	Labor rate per unit for services provided during normal business hours for lounge chairs, sofas, and ottomans	533	Per Piece	45	\$23985
4	Labor rate per unit for services provided during normal business hours for exterior furniture	64	Per Piece	15	\$960
	Total Price				\$40529

Company Name: K & M Steam Cleaning

City's Contract Manager:

Jorge Valle, Phone (512) 974-7432, jorge.valle@austintexas.gov

Offerors Contract Manager:

Name: Ken Moncebaiz / Angel Vijarro

Phone Number: 512-836-8900

Email Address: handmsteamcleaning@sbcglobal.net

G. LOCAL BUSINESS PRESENCE IDENTIFICATION

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

H. NON-DISCRIMINATION & RETALIATION CERTIFICATION

City of Austin, Texas Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all Solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices is being carried out.
- (7) To require of all Subcontractors having fifteen or more employees who hold any Subcontract providing for the expenditure of \$2,000 or more in connection with any Contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees

are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue. Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 28 day of March, 2019

CONTRACTOR

Authorized Signature

Title

K&M Steam Cleaning
Mr. Mike
President

I. NONRESIDENT BIDDER PROVISIONS

Company Name K&M Steam Cleaning INC.

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: Resident Bidder

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
- (2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: _____ Which State: _____

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: _____

**J. MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM
SUBCONTRACTING/SUBCONSULTING ("SUBCONTRACTOR") UTILIZATION FORM**

SOLICITATION NUMBER:

SOLICITATION TITLE:

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions:

- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
- b.) Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.

☒ **NO, I DO NOT intend to use Subcontractors/Sub-consultants.**

Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

☐ **YES, I DO intend to use Subcontractors /Sub-consultants.**

Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information

Company Name	K&M Steam Cleaning INC		
City Vendor ID Code	V00000956726		
Physical Address	8910 Research Blvd., Ste. B2		
City, State Zip	Austin, Tx 78758		
Phone Number	512-836-8900	Email Address	Kandm Steam cleaning @ sbcglobal.net
If the Offeror City of Austin M/WBE certified?	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES Indicate one: <input checked="" type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture		

Offeror Certification: I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WBE Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed **Subcontracting/Sub-Consulting Utilization Form**, and if applicable my completed **Subcontracting/Sub-Consulting Utilization Plan**, shall become a part of any Contract I may be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to add Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit the **Request For Change** form to add any Subcontractor(s) to the Project Manager or the Contract Manager for prior authorization by the City and perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form.

Ken Moncebaiz - President

Name and Title of Authorized Representative (Print or Type)

Signature/Date

K. MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (mbe/wbe) PROCUREMENT PROGRAM
subcontracting/subconsulting ("subcontractor") utilization PLAN

SOLICITATION NUMBER:

SOLICITATION TITLE:

INSTRUCTIONS: Offerors who DO intend to use Subcontractors may utilize M/WBE Subcontractor(s) or perform Good Faith efforts when retaining Non-certified Subcontractor(s). Offerors must determine which type of Subcontractor(s) they are anticipating to use (CERTIFIED OR NON-CERTIFIED), check the box of their applicable decision, and comply with the additional instructions associated with that particular selection.

☐ I intend to use City of Austin CERTIFIED M/WBE Subcontractor/Sub-consultant(s).

Instructions: Offerors may use Subcontractor(s) that ARE City of Austin certified M/WBE firms. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to confirm if the Offeror's intended Subcontractor(s) are City of Austin certified M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's Subcontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)

☐ I intend to use NON-CERTIFIED Subcontractor/Sub-Consultant(s) after performing Good Faith Efforts.

Instructions: Offerors may use Subcontractors that ARE NOT City of Austin certified M/WBE firms ONLY after Offerors have first demonstrated Good Faith Efforts to provide subcontracting opportunities to City of Austin M/WBE firms.

STEP ONE: Contact SMBR for an availability list for the scope(s) of work you wish to subcontract;

STEP TWO: Perform Good Faith Efforts (Check List provided below);

STEP THREE: Offerors shall insert the name(s) of their certified or non-certified Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)
- All required documentation demonstrating the Offeror's performance of Good Faith Efforts (see Check List below)

GOOD FAITH EFFORTS CHECK LIST –

When using NON-CERTIFIED Subcontractor/Sub-consultants(s), **ALL** of the following **CHECK BOXES MUST** be completed in order to meet and comply with the Good Faith Effort requirements and all documentation must be included in your sealed Offer. Documentation **CANNOT** be added or changed after submission of the bid.

- ☐ **Contact SMBR.** Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.
- ☐ **Contact M/WBE firms.** Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the Austin Metropolitan Statistical Area, to provide information on the proposed goods and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.
- ☐ **Follow up with responding M/WBE firms.** Offeror shall follow up with all M/WBE firms that respond to the Offeror's request. Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

SOLICITATION NUMBER:

SOLICITATION TITLE:

- ☐ **Advertise.** Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.

- ☐ **Use a Community Organization.** Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

**L. MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM
SUBCONTRACTING/SUBCONSULTING ("SUBCONTRACTOR") UTILIZATION PLAN**

SOLICITATION NUMBER: **IFB 5800 SMW 1001 REBID**

SOLICITATION TITLE: **Upholstery Cleaning Services for Austin Public Library**

(Offerors may duplicate this page to add additional Subcontractors as needed)

Subcontractor/Sub-consultant	
City of Austin Certified	<input checked="" type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	V00000956726
Contact Person	Ken Moncelbaiz Phone Number: 512-836-8900
Additional Contact Info	Fax Number: E-mail: handmstreamcleaning@spcglobal.net
Amount of Subcontract	\$ 40,529.00
List commodity codes & description of services	Steam cleaning 4857805, 4852789, 4862787, Upholstery cleaning 48627, 48634
Justification for not utilizing a certified MBE/WBE	

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

SMBR Contact Information			
SMBR Contact Name	Contact Date	Means of Contact	Reason for Contact
		<input type="checkbox"/> Phone OR <input type="checkbox"/> Email	

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the Offeror ☐ HAS or ☐ HAS NOT complied with these instructions and City Code Chapters 2-9A/B/C/D, as amended.

Reviewing Counselor

Date

I have reviewed the completing the Subcontracting/Sub-Consultant Utilization Plan and ☐ Concur ☐ Do Not Concur with the Reviewing Counselor's recommendation.

Director/Assistant Director or Designee

Date

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Shawn Willett 4-2021	PM Name/Phone	Monica McClure
Sponsor/User Dept.	Austin Public Library	Sponsor Name/Phone	4-9619
Solicitation No	IFB 8500 SMW1001	Project Name	Upholstery Cleaning
Contract Amount	Approx. \$500,000 Annually	Ad Date (if applicable)	2/11/19
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input checked="" type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
Provide Project Description**			
This IFB is for upholstery cleaning services for Austin Public Library			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
N/A			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
9368833 - 100% ; Cleaning and protection Services, Upholstery			
Shawn Willett		1/30/2019	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY		
Date Received		Date Assigned to BDC
In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:		
<input type="checkbox"/> Goals	% MBE	% WBE
<input type="checkbox"/> Subgoals	% African American	% Hispanic
	% Asian/Native American	% WBE
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|--|---|
| <input type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

There are no available M/WBEs available for this contract.

Subcontracting Opportunities Identified

There are no subcontracting opportunities identified.

Sonya Powell	
SMBR Staff <i>Sonya Powell</i>	Signature/ Date <i>2/6/19</i>
SMBR Director or Designee <i>[Signature]</i>	Date <i>2/7/19</i>
Returned to/ Date:	